IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5544 OF 2004

M/s.Hit-Niketan Co-op. Housing Society Ltd. : Petitioner

V/s.

The Divisional Jt. Registrar, Co-op.

Societies & Ors. : Respondents

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Mr.N.N. Bhadrashete for the petitioner.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader, for the respondent nos.1 and 2.

Mr.Nitin Raut for the respondent no.3.

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CORAM : S.A. BOBDE, J.

October 3, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Chinchalikar, the learned Asstt. Govt. Pleader for the respondent nos.1 and 2 and Mr.Raut, learned counsel for the respondent no.3, appear and waive service of rule.

Heard by consent.

2. The petitioner-society has challenged the order of the

Divisional Joint Registrar, Co-operative Societies, dated 10.2.2004 by which the society's application for revision of the order of the Asstt. Registrar was rejected.

3. The only submission made by Mr.Bhadrashete, the learned counsel for the petitioner, is that the authorities have committed an error of law apparent on the face of the orders in holding that the petitioner-society is not entitled to adjust the amount paid by the respondent no.3 towards interest in the first instance, but must first adjust towards the principal. This submission of the learned counsel appears to be correct since the Asstt. Registrar in his order has observed that the society is not entitled to credit the amount repaid by the respondent no.3 in the first instance towards interest since doing so amounts to charging compound interest. The Divisional Joint Registrar has confirmed that order in the same terms that it amounts to charging compound interest.

4. In the absence of any reasons given by the authority, it is difficult to sustain the impugned order that if the society credits the amount repaid towards interest in the first instance, it amounts to charging compound interest. The learned counsel for the respondent no.3 has submitted that on the basis of the statement of accounts, it does

appear that the society has charged compound interest. The learned counsel, however, is not in a position to demonstrate how compound interest is charged.

5. Having regard to the interest of justice, I am of view that the impugned order should be set aside and the matter be remanded to the Asstt. Registrar for determining whether any compound interest contrary to the contract or bye-laws has been charged and thereupon to render a clear finding of fact. All questions on merits are kept open. The amount deposited by the respondent no.3 may be withdrawn by the society and adjusted towards final dues payable by the respondent no.3.

6. The rule is made absolute in the above terms.

S.A. BOBDE, J.